

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SELIM ZHERKA,

Plaintiff,

-against-

PHILIP AMICONE, individually, and PHILIP AMICONE in his capacity as Mayor of the City of Yonkers, New York,

Defendant.

PHILIP AMICONE,

Third-Party Plaintiff,

-against-

THE GUARDIAN NEWS, INC. and RICHARD BLASSBERG,

Third-Party Defendants.

ECF Case

07 Civ. 9618 (CLB)(GAY)

REPLY TO COUNTERCLAIMS

Defendant and Third Party Plaintiff Philip Amicone (“Amicone”), by and through his attorneys DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, as and for his Reply to the Counterclaims raised by Plaintiff Selim Zherka (“Zherka”) in his “Answer To Counterclaims With Counterclaims” (“Answer”), filed on May 22, 2008, alleges as follows:

1. Amicone denies each and every allegation contained in paragraphs numbered 1 through 11 of the Answer.

AS AND FOR A REPLY TO THE FIRST COUNTERCLAIM

2. Amicone denies each and every allegation contained in paragraph numbered 12 of Zherka's Counterclaim and respectfully refers all questions of law to the Court for judicial determination.

3. Amicone denies each and every allegation contained in paragraph numbered 13 of Zherka's Counterclaim and respectfully refers all questions of law to the Court for judicial determination.

AS AND FOR A REPLY TO THE SECOND COUNTERCLAIM

4. Amicone denies each and every allegation contained in paragraph numbered 14 of Zherka's Counterclaim and respectfully refers all questions of law to the Court for judicial determination.

5. Amicone denies each and every allegation contained in paragraph numbered 15 of Zherka's Counterclaim and respectfully refers all questions of law to the Court for judicial determination.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. Amicone's counterclaims do not violate Third Party Defendants' rights under the First Amendment to the United States Constitution.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. Amicone's claims are not unlawful by reason of the alleged failure to obtain authorization by the City Council of the City of Yonkers to expend public moneys.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Payment by the City of Yonkers for legal services in this case does not constitute an unlawful gift of public moneys in violation of the New York State Constitution.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. Amicone's claims comply with CPLR 3016(a) of the New York State Civil Practice Law and Rules.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. Statements made by Third Party Defendants do not constitute speech protected by the First Amendment of the Constitution and are actionable for damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. The statements made by Third Party Defendants are not protected by any privilege cognizable under federal or state law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. Third Party Defendants' counterclaims fail to state a claim upon which relief can be granted.

Dated: White Plains, New York

June 16, 2008

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP

By:


Kevin J. Plunkett (KP 3049)
Brian T. Beldwich (BB 6910)
Matthew S. Clifford (MC 1134)
1 North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

Attorneys for Defendant/
Third Party Plaintiff
Philip Amicone